

**104 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.8537 of 2015

Date of Decision: December 19, 2015

Jaswinder Singh and others

.... Petitioners

vs.

Gurjant Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Rajan Bansal, Advocate for the petitioners.

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh J.(Oral)

Impugned in the present revision petition is the order dated 03.11.2015 (Annexure P-6) passed by learned Addl. District Judge, Bathinda, whereby the application of the defendants-petitioners for framing additional issue was dismissed.

I have heard learned counsel for the petitioners and have also carefully gone case file.

A perusal of the file shows that a suit was filed by the plaintiffs-respondents on 09.04.2009 seeking possession of the land by way of redemption. In this case, the issues were framed on 23.02.2011. Later on, additional issues were framed twice i.e. on 19.01.2012 and 27.11.2012. Thereafter, the suit was decided on 04.01.2013.

Aggrieved by the judgment of the lower court, the present defendants preferred an appeal. During the pendency of the appeal, an application was filed by the defendants on 21.07.2015 praying for framing additional issue, stating that the suit was barred as earlier an application No.24 of 10.01.1968 for redemption was filed by Bhagwan Kaur and S. Dhan Singh, which was dismissed by Shri J.S. Qaumi, PCS, the then SDO (Civil), Collector, Faridkot, Camp at Bathinda. Therefore, the present suit is barred. Then another issue arises as to whether the plaintiff should have filed the suit under Section 12 of the Redemption and Mortgages Act, 1913 and that whether the plaintiff has not come to the court with clean hands?

Learned Addl. District Judge, Bathinda, is of the view that issues were framed by the lower court and then additional issues were framed twice and the present application has been filed only for delaying the disposal of the case. Learned Addl. District Judge, Bathinda, further held that when the parties are alive to the controversy then even if, there is no issue and no prejudice is going to be caused to the parties, the court can record the findings on the basis of pleadings and evidence of the parties.

The history of the case recorded above shows that after framing the issues at the initial stage, the trial court twice framed the additional issues. At this stage, there is nothing on record to show that the present defendants pressed before the lower court that the issue pointed out in the application should be framed. The suit was decided on 05.06.2012 and after three years, suddenly, the

defendants recollected that some issues have not been framed.

I am of the view that the appeal was going to be disposed of, when the present application was filed so as to seek remand of the case, thereby delaying the disposal of the redemption suit. In case of remand, the defendants will be at advantage, as the possession was with him and the suit was for redemption. Since the parties were alive to the controversy, even if, there is no specific issue, the court can always record the findings. Therefore, at this stage, there is no ground to order for framing of additional issue and the matter can be decided on the main issues already framed regarding the entitlement of the plaintiff for possession while redemption is sought.

Learned counsel for the petitioners has relied upon the authorities of different High Courts as well as Hon'ble the Supreme Court in the following cases:

- “1. “Sher Singh vs General Public, 2001(3) R.C.R. (Civil) 780.
2. “Rajinder Tandon vs Thomas Nasir Masih”, 1999(1) R.C.R. (Civil) 539.
3. “Amiruzzaman @ Md. Amir and Other vs Nanik Cand Binakia” 2012(3) PLJR 77.
4. “Madan Lal vs Badri Narain And Others”, 1987(3) SCC 460.
5. “Chebrol Sriramalu vs Vakalapudi Satyanarayana”, 2013(9) SCC 404.
6. “Kamalammal and others vs Thirunavukkarasu and others” 2001 AIHC 3878.
7. “Nazar Singh vs Satnam Singh and others” 2015 (4)

R.C.R. (Civil) 51.

8. "Smt. Geeta Chopra @ Sangita vs Madan Lal and others" 2006(2) R.C.R. (Civil) 762.

9. "Sumer Chand vs Mewa Ram", 2009(74) ALR 688.

In view of the peculiar circumstances discussed above, I am of the view that in the present case, no additional issue is required to be framed at this stage and the objections of the defendants can be met by directing the first appellate court to discuss and determine the plea raised by the defendants in the written statement.

With the abovenoted observations, the present revision petition stands dismissed.

December 19, 2015
sarita

(KULDIP SINGH)
JUDGE